

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT ANGEL SALDANA,

Defendant and Appellant.

G040610

(Super. Ct. No. 07WF1976)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Hoffer, Judge. Affirmed.

Sylvia Whatley Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Robert Angel Saldana entered into a plea agreement whereby he agreed to incarceration for nine years and eight months for an assault with a deadly weapon which was committed for the benefit of a street gang, participation in which he admitted. In return, two counts of attempted first degree murder and other enhancement allegations were dismissed. As part of his plea agreement, he waived his right to appeal from any legally authorized sentence the court might impose within the limits of the plea agreement. The court imposed a sentence of nine years, eight months.

Nonetheless, Saldana timely filed a notice of appeal, challenging both the plea and admissions and the sentence. He sought a certificate of probable cause pursuant to Penal Code section 1237.5 and was denied. The court issued an order amending the judgment to give him 390 days of custody credits, but otherwise left his plea in tact.

Appellate counsel suggested several possible appellate arguments, but could not make any of them fly. She therefore filed with this court a *Wende* brief (*People v. Wende* (1979) 25 Cal.3d 436, complying with *Anders v. California* (1967) 386 U.S. 738, by setting forth the facts of the case and the possible arguments she had investigated and abandoned. We have reviewed the points she considered and examined the record for others. We find ourselves in agreement with her that there is no arguable issue on appeal.¹

Defendant having pled guilty, counsel's review concentrated on putative errors in the plea and sentencing process. This went nowhere because no certificate of probable cause had been obtained. Appellant has not suggested, his attorney could not conceive of, and we cannot imagine a way around that requirement on the facts of this case. "A defendant who has pleaded guilty or nolo contendere to a charge in the superior court, and who seeks to take an appeal from a judgment of conviction entered thereon, may not obtain review of so-called 'certificate' issues, that is, questions going to the

¹ We notified appellant of the filing of the *Wende* brief and invited him to file his own brief. He did not do so.

legality of the proceedings, including the validity of his plea, unless he has complied with section 1237.5 of the Penal Code and the first paragraph of rule 31(d) of the California Rules of Court – which require him to file in the superior court a statement of certificate grounds as an intended notice of appeal within 60 days after rendition of judgment, and to obtain from the superior court a certificate of probable cause for the appeal within 20 days after filing of the statement and, hence, within a maximum of 80 days after rendition of judgment.” (*People v. Mendez* (1999) 19 Cal.4th 1084, 1088, fns. omitted.) Appellant having failed to do so – and in our opinion, being unable to do so, there being no grounds therefore – he is precluded from such a challenge and appellate counsel correctly abandoned that as a ground of appeal.

In fact, without a certificate of probable cause, appellant may obtain review solely of so-called “noncertificate” issues. These are “postplea questions not challenging his plea’s validity and/or questions involving a search or seizure whose lawfulness was contested pursuant to [Penal Code] section 1538.5.” (*People v. Mendez, supra*, 19 Cal.4th at p. 1088.) And even those would have required a notice of appeal stating noncertificate ground – which does not appear to have been filed here.

This is not a meaningless formality. The certificate of probable cause is designed for situations in which valid, contestable legal issues exist but a party, for whatever reason, wishes to plead guilty – often to take advantage of a lenient sentence such as the one appellant received. To distinguish those cases from ones in which there is no serious legal issue, we require the trial courts to screen such requests through the certificate process. The trial court, having been there when the plea was entered, is well situated to evaluate the bona fides of issues that might be raised and avoid drains upon the public fisc in pursuit of quixotic arguments.

In his request for a certificate of probable cause, appellant asserted, “I would like to appeal my case because of my gang enhancement charge. I myself am not a gang member nor am I on probation. My lawyer withheld information about my gang

enhancement and I was wrongfully charged. I do not have a background and this is my first felony along with my first time in prison. I feel I did not have a fair plea in my case therefore I would like to appeal my case in trial. Also my sentenced time is not correct with what I signed for when I was convicted.” The last complaint was corrected by the trial court, and we see nothing to indicate an abuse of discretion in deciding on this showing that a certificate of probable cause should not issue.

The justifiable absence of such a certificate precludes review of the issues appellant now wishes to raise in the appeal he waived. We can find no others. The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.